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STATEMENT

OF THE AFFAIRS OF THE LATE

BANK OF UPPER CANADA,

AT KINGSTON,

TAKEN FROM AUTHENTIC DOCUMENTS.

Kingston:

1840.

The Stockholders, Certificate holders and others of the late Bank of Upper Canada at Kingston, frequently make enquiries at the Commissioners' Office on matters respecting the Institution, which occupies the time of the Clerk in giving long explanations, which are frequently misunderstood, and an erroneous impression goes abroad: to prevent which, the following abstract of the Proceedings of the Commissioners is published.

The Commissioners, HUGH C. THOMSON, HENRY SMITH, & JOHN STRANGE, Esqrs., commenced operations in April, 1829, by demanding the books, papers, notes and other effects of the institution, which were delivered to them, and a notice inserted in the newspapers of the Province, of the place and hours of doing business, and also sent Circulars to the Creditors of the Institution, calling upon them to present their claims, and also to the debtors, requesting them to provide for the payment of their debts.

By the 4th clause of the Act, the Commissioners are bound to submit all claims to arbitration upon a demand from the debtor.

The result of many of the arbitrations are awards for amounts, in some instances not one fifth part of the real amount due the institution; the consequences were, the Commissioners were left with very limited means to discharge the debts of the Institution, and pay their expenses, and after the award in the case of Thomas Dalton, where £900 was awarded instead of £4941 17 6 1.4 justly due, the arbitrators, invariably allowed the Stock paid in by the Stockholders to be set off against what they owed the Bank.

April 14, 1829.—Mr. Thomson moved that the true and equitable meaning of the Statute is, that the Commissioners are bound to receive all notes of the late Bank and Certificates given by the late Commissioners in payment of debts due the Institution.

Yeas—H. C. Thomson, Henry Smith.
Nay—John Strange.

Mr. Smith moves that no credit shall be given to any debtor for the amount of Stock he may hold.

Yeas—Henry Smith, John Strange.
Nay—H. C. Thomson.

April 24th, 1829.—Thomas Dalton demands an arbitration, and the following arbitrators appointed:

For the Bank,	George McKenzie,
For Thos. Dalton,	Barnabas Bidwell,
Umpire,	Douglass Prentiss.

Demand against Thomas Dalton:

Due on Bond and Mortgage, with interest,	£4793 7 6 1.4
Draft on Coleman, with interest,	148 10 0
Total,	4941 17 6 1.4

Dalton's set off:

By amount of his Bond payable in Kingston Bills, *now depreciated* to 6d. for the dollar,	£242	1	0
To amount of Installments paid in on 94 shares,	752	0	0
Value of Dalton's Bond in Kingston Bills,	342	1	0
Balance due Thos. Dalton,	409	190	

The Commissioners object to the set off, as being unjust and unreasonable, observing, that if he can get Bills at 6d. in the Dollar, his debt can be satisfied for one tenth of the amount justly due the Institution, and of which he has had full value. By such means the public will be defrauded out of 4s. 6d. in every dollar, which Mr. Dalton will put in his pocket (and a few others.) The Commissioners request to know upon what grounds any one can assert that the bills are only worth 6d. in the dollar.

The arbitrators made an award, that the said Thomas Dalton do pay the Kingston Bank Commissioners the sum of £900 in quarterly installments of £31 5 each, without interest, and in any demands he can procure, including certificates given for stock.

The award was signed by Barnabas Bidwell and Douglass Prenties. The Commissioners return the award, with their reasons,—That they consider it contrary to the submission and the Statute: that stock notes were not transferable—that arbitrators were not authorised to enter into a question of time, nor yet to order a release of any property held in security for a debt, until it was satisfied.

The arbitrators return the award without alteration, accompanied with remarks.

AWARD RETURNED.

The Commissioners return the award in the case of Thomas Dalton with written objections. The following are extracts from the answer of Mr. Barnabas Bidwell to the objection of the Commissioners:

"But after the most respectful attention to your objections, I see no cause for changing my opinions on either of the points which appear to you objectionable.

"You think that the Defendant's Bank Stock ought not to have been allowed to him by way of set off. In judging of that point, we ought to bear in mind that the question to be decided was, between the late Bank as one party, and Mr. Dalton as the other. These are the only parties in the case. Their mutual claims were submitted, but the submission did not extend to any question or claim between the Bank and its creditors generally, or any other particular party or parties, as between the Bank and a Stockholder the latter is a creditor to the amount of Stock paid into the Bank by him, and not reimbursed to him, but standing to his credit on the Books of the Bank, and I can see no reason, in law or equity, why, in a settlement between

the Bank and him, his stock thus credited to him should not be allowed by way of deduction or set off, and the balance be considered the true debt due from him to the Bank.

"On that point the three arbitrators were unanimous of opinion, that the defendant's stock actually paid in, and not reimbursed, should be allowed to him by way of set off.

"In the present act, stock creditors are not distinguished from other bank creditors, but placed on the same footing. They are entitled equally with bill holders and certificate holders, to exhibit their claims and share in the dividends. The Commissioners cannot legally exclude or postpone them.

It results as a necessary consequence that a stock creditor is entitled to the same means of obtaining payment. He may therefore, as one of the means, set off his stock credit in part satisfaction of any debt due from him to the Bank, precisely as he might set off a note or bill, or any other evidence of a bank debt due to him, bank credits all are, or as the Commissioners have expressly declared, should be placed on precisely the same footing. On that fair and recognised principle the award was founded.

Another objection which you make to the award is, that it allows the defendant to pay by instalments. On this point I beg leave to state, that as the defendant offered to pay in the manner and at the times specified in his contract, but was prevented by the refusal of the Commissioners then representing and managing the Bank, so that there was no breach of contract on his part, all three of the arbitrators agreed that he ought now to be allowed a reasonable length of time for paying the balance that might be found due, and a majority of the arbitrators, as you see by the award, thought he was entitled to the same proportionable instalments as was stipulated in his original contract.

"It is a settled principle of law that if any party, to or for whom a specific contract is to be performed, by the delivery of specific articles, or the doing of any specified services, prevents the performance by delaring that he will not accept it, or by any other words or acts such refusal or prevention, discharges the party thus prevented, from any further performance, and is a legal bar to the preventing party against any action for the non performance.

The Defendant's cases come directly within that well known rule of law. This offered performance of his contract having been refused by the Commissioners, their successors, the Plaintiffs, had at law no right of action against him, and could now only come in equity to claim any performance whatever of the contract, and that which is awarded, appeared to be equitable, being in respect both to the time and amount of the instalments, conformable to the terms of the original contract."

[Remark.—On reading the above, it is almost impossible to believe

it could come from the pen of Mr. Barnabas Bidwell, a man allowed to possess a great knowledge in law, who writes in support of a principle to favor a worthless friend, totally at variance to all law and justice, which a very school boy would see through and scout, as calculated to promote fraud, and amounts to this,—that if two or more persons put into some trading concern the necessary amount of stock to carry on business, and become involved in debt, when the creditors ask for pay they call themselves creditors, and say, before you get a fraction of your pay we must first take out the amount we put in as stock."]

—

June 26, 1829.—Mr. Dalton applied to the Board for his property to be released from the mortgage. The Commissioners agree to take counsel upon the case.

Extract from the Counsel's opinion:

"4th. That part of the Statute which enacts that the award of Arbitrator shall be final and binding upon the parties—must be construed to mean, an award free from fraud, and one authorised by the act, and not as in this case, in direct opposition to its provisions."

—

July 31, 1829.—Mr. Thomson moves that the award of the Arbitrators in the case of Thomas Dalton, be complied with, except so much thereof as relates to receiving stock certificates and the granting a release from the mortgage before payment is made.

Yea—H. C. Thomson,

Nays—John Strange, Henry Smith.

—

Nov. 27, 1829.—Board met. Present—Hugh C. Thomson, Archibald McDonell.

Mr. Dalton applied to the Commissioners to accept the award in his case, that he would relinquish the part relating to paying in Stock Certificates. The Commissioners present voted that the award be accepted. At the request of Mr. Dalton, they release a portion of his property from the mortgage, called the Battery Lots, to enable him to purchase certificates to pay his debt, and he would ask no further release until his debt was paid.

—

Dec. 10, 1830.—Board met. Present—Hugh C. Thomson, John Strange, Archibald McDonell.

Mr. Dalton applied to the Board to get his Brewery, and 400 acres of land in Murray. The majority of the Commissioners consent, and the property requested is released from the mortgage.

—

May 4, 1832.—Mr. Dalton was requested to deed to the Commissioners the property not released from the mortgage. He replied that he had sold said lands to pay his debts, except the broken front of No. 19 in the Township of Kingston, which he requested to be released

from the mortgage, having bargained for the same with Mr. Drummond. Upon being requested, would not agree for the Commissioners to receive the purchase money. Answer refused. Notice was given to Mr. Drummond not to purchase the said broken front, or any other property under mortgage to the Commissioners.

Some of the intermediate deeds of this broken front had not been recorded. John Ellerbec was the last Grantee on record: he, at the request of Mr. Dalton, executed a deed direct to Mr. Drummond.

The Commissioners submit to the Legislature the propriety of investigating this transaction. Mr. Dalton, having frequently refused to pay his debt, the Commissioners placed the account in the hands of their Solicitor for collection.

SUIT AGAINST DALTON.

Nearly 10 years after Dalton's award was made, and above two years after the last instalment was due, the Commissioners instituted a suit against Dalton. Dalton's Counsel endeavored to set the award aside, but which did not succeed, and the damages were assessed at the last Assizes in Kingston. The amount claimed was £900, as stated in the award, and interest on the instalments after they became due, to be paid in current money, the instalments not being paid in any *legal* liabilities against the Bank as they became due. According to law, when any article is to be delivered for any consideration, at a certain time and neglected, the value is due in current money.

Judge Jones directed the Jury to find no damages. He said he did not conceive there could be any on the non-payment of £900 in depreciated paper, worth about 6d. in the dollar; consequently the verdict was only £900, and application has been made to the court above to pay it in any trash Defendant can pick up for merely nothing.

Notwithstanding Judge Jones' opinion, that no damage is sustained by the non-payment of £900 in Kingston Bank Bills; it can be proved, that that sum, with the interest due from the award, would pay about 8s. in the pound to all the legal creditors of the Bank, and also that Dalton is justly due at this time an amount sufficient to pay all the legal creditors of the Bank twice over.

That Dalton actually owes the institution about Ten Thousand Pounds, reckoning the interest of his debts agreeable to Bank usage, and yet such a man has found friends to assist him to fob the public out of nearly Ten Thousand Pounds. Dalton has said he can pay his Bank debt for £100.

The creditors of the Institution, and many of the Stockholders are indignant at being defrauded out of their property, and wish to know particulars. They may be traced to the framers of the last Act, one of whom was Dalton, who in fact introduced the act, and was one of the grand concoctors of the crafty clauses, among which is the one allowing Debtors of the Institution to demand an arbitration, that they

may have a chance of selecting friends, who, although a debtor justly owes £4941, will make an award to say, he shall pay £900, and that too, in installments, that will take above 7 years to pay; but that is not the length of their iniquity; they order that no interest shall be paid for the use of even that reduced amount; and then to crown the villany, and well knowing this very award must reduce the means of the Bank from paying their creditors, they direct the award to be paid with obligations, the very acts of these arbitrators have depreciated and reduced in value.

The result of another award with a debtor to a larger amount, on terms founded upon the same principles on which one of the arbitrators in Dalton's case was a party, completely destroyed the prospects of paying the creditors of the Bank. The just debts of these two debtors, would have paid all the creditors of the institution 20s. in the pound, in 1829, and it is shown that the result of the arbitrations with those two creditors, destroyed that prospect.

It will be seen from the extracts, that the award in Dalton's case was so base, that the Commissioners voted against receiving it: because, the submission did not allow them to assess damages, or to take upon themselves to give time, or to order payment in base money or paper, and more especially to direct that any Bond or mortgage shall be cancelled before the debt is paid, for which it was given in security. The opinion of several counsel confirmed the steps the Commission had taken in the premises.

Mr. Smith resigned his Commission soon after, and Mr. McDonell was appointed in his place.

At a Board—present, Messrs. Thomson and McDonell—Dalton urged them to accept the award upon certain conditions, and also to release part of his property from the mortgage. Some time after another part was released, and soon they had no hold of any of his property to secure his debt. The plain fact is, that Dalton and his agents have fairly tricked the public out of nearly Ten Thousand Pounds in principle and interest.

EXTRACTS FROM THE COMMISSIONERS' REPORT TO THE LEGISLATURE.

"Such debtors as were disposed to avail themselves of the Provisions of the Statute, had submitted their accounts to arbitration.

"Many accounts are yet unsettled, arising from a variety of causes beyond the control of the Commissioners. Many debtors have left the Province: many resided out of the Province when they contracted their debts: several have died without leaving any visible effects; numbers plead insolvency: others have neglected to arrange their accounts; some dispute the claims of the Bank, while others make demands, the justice of which the Commissioners are unable to discover, although much time was spent in searching the books and other documents belonging to the institution.

"The Commissioners submit to the Legislature the necessity of providing funds to institute such legal suits as may be requisite.

"Had the Commissioners entered upon their duties soon after the failure of the Institution under a well framed law, in all probability the business might have been settled without much injury to any one. By suffering several years to elapse after the failure of the Bank, before the present act was passed the relative situation of many of the debtors were altered.

"The interference of the Legislature deprived the Stockholders of the right and power to wind up their concerns by placing them in the hands of Commissioners for that purpose, and was considered by many to be unjust and injurious, and tended to destroy the moral obligation which honest men owe to each other in business transactions.

"The want of funds, and the clause of limitations, caused many debtors to free themselves from their obligations. The debtors were scattered about in both Provinces, the United States, and even Europe, and although diligence as well as expense were used to find them, and ascertain their circumstances, very little could be done on account of evasions or delays, until the limitations expired.

To perform such a long chain of scattered duties required money, which the Legislature omitted to supply, but left the Commissioners to their own private resources to support their office. Several sums have been expended in travelling expenses by their Clerk, in searching out debtors, examining wild lands received for debts, and endeavoring to perfect defective titles by procuring witnesses to deeds neglected to be registered. To which may be added Postage, Stationary, Advertising and many other items of expense.

The following extracts are from the Report made January, 1836:

"The Commissioners regret, notwithstanding their utmost endeavors, that they have not been able before this period, to bring this very unpleasant duty to a close, but some new difficulties are constantly presenting themselves, which make it impossible.

"The want of funds prevented the Commissioners proceeding to the best advantage. If they had been provided with funds by the Legislature, they might have recovered debts which are now lost. On that account suits could not be entered against defaulters, and the very short period of the limitations left no time to provide a remedy. There could be no prospect of receiving current money when payment could be made to the Institution in bills obtained at a discount.

"The Commissioners have up to this date supported their office on their own responsibility, which required a Clerk, whom it is impossible to discharge until a final arrangement of the affairs of the Institution; and he has on that account been prevented in engaging with other business which he expected would be more profitable to his family, and consequently a detriment. When he engaged it was believed his service would only be required for two years.

The Commissioners were appointed under the provisions of an act of the Legislature of Upper Canada: to that authority they wish to make a full statement of all their proceedings. For that purpose they respectfully request that your Excellency be pleased to recommend, that a Committee of the Honorable House of Assembly be appointed to investigate all matters and things done by them, as Bank Commissioners, and for that purpose their Clerk be sent for and examined, who from his general knowledge of the proceedings, will be the most competent person to give the necessary information to the Legislature.

AWARD IN THE CASE OF SMITH BARTLET.

Mr. Smith Bartlet, the principal creditor, demanded an arbitration, and in November, 1829, his case was submitted to the following arbitrators:

For the Commissioners,	George W. Yarker,
For Mr. Bartlet,	Barnabas Bidwell,
Umpire,	Dr. E. W. Armstrong.

The demand on Mr. Bartlet was, with interest on Bond and Mortgage, £9222. Mr. Bartlet presented a set off similar to Mr. Dalton. He valued and claimed the amount of his stock, at 5s. in the dollar, paid on 70 shares, £784 0 0

He values the amount of his bond at 6d. in the dollar, at 438 18 0

Making the balance in his favor, 345 2 0

Messrs. Bidwell and E. W. Armstrong sign an award to pay £1750 in quarterly installments of £125 each, without interest, in any demands against the institution. Mr. Bartlet paid a portion of his award in certificates in due season, and the balance in some land near Kingston, and sundry tracts of wild lands in different parts of the province, some of which were found occupied by persons having titles for them as they said.

Peleg Whitney demanded an arbitration and his case submitted to the following persons:

James W. Armstrong,
Wm. Driscoll,
Michael Brennan.

Demand of the Bank against Whitney, £947 4 4 1-2

Whitney claimed as a set off, £480, the amount paid by him on 60 shares of stock, and also £250 he said was promised him by the Directors for his services. The Commissioners object to the principle of allowing any partner of a joint stock company a set off for stock until the debts of the company were paid. Also, that he had shown no legal proof that any thing was due to him for services.

It was awarded for him to pay £193 4 4 1 2. Whitney paid the amount in certificates given for bills.

Henry Grahams, an Agent, demanded an arbitration, and the following arbitrators were chosen—Messrs. Henry Cassady, James Bolton, and James W. Armstrong.

Demands of the Bank:—

Agency Account,	L	726	13 10
Amount of note and interest,		248	4 0
Total,		974	16 10

Award to pay L 317 in full of all claims, which was paid in certificates for bills.

ARBITRATIONS.

Thirty persons demanded arbitrations with the Commissioners.

The demand against 28 was nearly L 4000, making with interest, about L 5600.

Except the Agent, Henry Graham, the other debtors' claims of set off, were only the amount of their stock against the claims of the Bank, which the arbitrators invariably allowed against the amount of their notes of hand, and without adding the interest due on them.

The result was, that only about L 1600 was awarded in favor of the Commissioners, about L 1000 of which was paid directly in certificates, given by the Commissioners.

General result of the arbitrations, including Dalton and Bartlet:—

Amount demanded with interest,	L	16,800	0 0
Amount awarded to Commissioners,		3,650	0 0
Lost to the creditors and the Stockholders, not owing a Bank debt,		13,150	0 0

Note—Some errors had to be corrected and allowed to Messrs. Miles, Evans, Atkinson and others.

When the Commissioners objected to the demand of debtors as partners in a company, to have their stock set off against their just debts, they referred to Dalton's award, in which not only stock was set off against his debt, but four parts of his debt—that they had more reason to claim damages than he had, he being a Director, and was one of those who, by his improper conduct, deranged the Institution. The arbitrators were convinced of the justness of the plea, and made their awards accordingly.

LAW MATTERS.

Mr. C. A. Hagerman was applied to for a statement of the monies collected, and other particulars respecting sundry promissory notes in favor of the Bank placed in his hands, as their Solicitor by the late Directors, to be collected by law. The following was received in reply, but no account of monies received by him:

To costs in divers suits brought by the said Bank against different

persons,	£300	0	0
To my advice and professional service and attendance after the said Bank had stopped payment,	116	13	4
To conveyancing and drawing mortgages from Dalton to said Bank,	59	6	8
To cash paid for registering mortgage,	11	0	0
Cash paid on account of Stock,	160	0	0
Total,	646	0	0

LIST OF DEBTORS BEING STOCKHOLDERS NOT TO THE AMOUNT OF STOCK PAID IN—1840.

	Amount of debt without interest.	Amount of Stock.	
Arnold, Thos.	£12 12 0	80	
Austin, Andrew	31 0 0	80	
Barker, Abram	16 16 7	40	
Clute, John G.	9 10 0	24	
Cumming, Benjamin	128 10 0	40	(Unknown.)
Dalton, Wm.	400 0 0	4000	do.
English, David	23 12 0	24	do.
Everitt, John	78 6 9	80	
Farley, Daniel	23 0 0	120	
Hayes, Orange	25 4 0	40	(U. States.)
Henry, Theophilis	16 0 0	32	(England.)
John, Solomon	82 15 0	0	(Unknown.)
John Stephan & Co.	209 6 9	400	(U. States.)
Morrel, Simeon	30 0 0	40	(Dead.)
Meighan, Robt.	196 10 0	240	(Unknown.)
Mizana, J. T., Dr.	25 0 0	80	do.
McLean, John	16 3 8 1-2	200	
Olcott, Benjamin	6 5 5	40	
Petra, Etienne	143 12 0	160	(Dead.)
Smith, Wm. Byard	80 0 0	80	
Small, John	118 0 0	96	(Toronto.)
Thorp, Henry	20 0 0	40	
Underhill, Thos.	10 10 9	48	(England.)
Ward, Elisha	16 0 0	16	[Dead.]

LIST OF DEBTORS OWING MORE THAN THEIR STOCK PAID IN.

	Amount of debt without interest.	Amount of Stock.	
Bryant, James	£27 10 0	16	
Brown, Daniel	100 16 4	80	(Dead.)
Coy, Hafile	32 0 0	24	do.
Cumming, John	355 17 0	160	do.
Cumming, Benjamin	128 10 0	40	(Unknown.)
Ferguson, John, Judge	171 8 0	80	(Dead.)

Hynes, John	118	10	0	80	(Unknown.)
King, John, R. N.	252	3	6	80	do.
Lake, John, Jr.	18	0	0	10	
Moore, John	223	10	0	80	(Dead.)
Payne, Wm. Capt. R. E.	349	18	6	40	(Unknown.)
Scantlebury, John	209	14	6	160	(Dead.)
Shepherd, Ebenezer	93	2	10	80	(Unknown.)
Whitaker, Thomas	555	4	11	320	[N. York.]

LIST OF PERSONS ARBITRATED, AND HAVE NOT PAID THEIR DEBTS.

Brewer, John	Hoetmans, J. S.
Dalton, Thomas	Lamb, William B.
Day, Lewis	Reid, Mary Ann
Evans & Atkinson,	Raynes, Francis.

When the Commissioners appointed by the Act 10th William 4th, passed March 20, 1839, entered upon their duty, the amount of debts due the Bank was about *L* 18,000, with from 6 to 7 years interest, making a total of principal and interest, of nearly *L* 24,000.

The amount of claims made on the Bank up to the period of the limitations Nov. 1st, 1839, by the debtors, was about *L* 7000. The certificates, amounting to *L* 5000, carried interest, and might be about *L* 1700, making a total of *L* 8,700, thus leaving a balance of above *L* 15,000 less,—about *L* 2000 at that time of bad debts, and sufficient to pay the amount paid in as Stock by the Stockholders, and a portion of interest for the same.

The above excess was increased by all the creditors of the Bank not making demands; for instance, the first Commissioners issued certificates for *L* 6200 The amount presented was *L* 5,000. In 1839 the amount of bills presented was L 2,000. Perhaps a large amount of Bills in proportion to the certificates, was not presented, and consequently so much in favor of the Stockholders.

The legal debts due by the institution are at this time less than L 5000, a sum which Dalton's debt in 1839 would have discharged.

LIST OF PERSONS NOT STOCKHOLDERS NOW OWING THE BANK.

Berthrong, H. G.	*L*5	0	0
Benedic, R. C.	0	0	0
Boulton, Geo. S.	25	0	0
Grethier, Alex.	11	5	0
Church, Wm.	2	5	0
Campbell, Duncan	29	15	6
Ferris, Joseph	50	0	0
Fralic, Chris. & Jacob	58	15	0
Fairfield, Benjamin	18	0	0
Gardner, James	47	10	0
Graves, George	140	0	0

Hall, Phillip F.	60	0	0
Hepburne, N. G.	25	0	0
Ives, Abner	62	0	0
McLeod, Alex.	6	5	6
Pringle, John	192	10	0
Stoughton, Wm.	60	10	10
Samson, Regd.	136	9	5
Stewart, Wm.	27	8	0
Scots, Wm.	25	0	0
Tuttle, John	13	9	3
Williams, Robt.	15	0	0
Williams, Thomas	40	13	3
Ross, William	12	10	0
Robbins, Edward	75	0	0

[The following remarks are taken from several authentic documents, viz., the examination of the Directors, and the Commissioners' Reports, &c. &c.]

The Bank of Upper Canada at Kingston, went into operation in 1819, and had it been conducted with honor or honesty, might have been profitable to the Stockholders, and perhaps not very injurious to the public, but the management was placed in avaricious hands, seeking the interest of themselves and a few friends, who in a little time became jealous of each other, and ruined the credit of the institution. At the time the Bank failed in 1822, it was under the following Directors—Benjamin Whitney, President; Smith Bartlet, Cashier; Archibald Richmond, Henry Murney, John Cumming, C. A. Hagerman, Neil McLeod, Thomas Dalton, John McLean. Some of them were extensive Stockholders, but it is well known many of them besides Dalton paid in very little for it. They took Stock and promised to pay, by a discounted note. In an institution with only a few thousand pounds paid in, we find at the first operations of the Bank, Whitney at one time was owing it for notes discounted, the enormous amount of £8300, and endorsed by a brother Director. Things went on smoothly for three years. The Directors were well pleased with each other, so much so, that at an annual election, Whitney said they understood each other so well, that a change might be injurious to the institution. At that time Dalton, with small means, had become one of the party, and allowed to pick a bone with them.

One time these worthies thought it would be convenient and profitable to reduce the influence of the small shareholders. They called a meeting, and proposed to alter the articles of association by first reducing the time of notice for that purpose, from 6 months to 6 weeks; then that the votes of a simple majority be sufficient, instead of two thirds; then, that the Stockholders have a vote for every share, instead of the regular reduced ratio as his number of shares increase. It would seem as if most of the Stockholders were mere creatures of

the Directors, dependent upon them for the means of carrying on their business, and voted yea for this alteration until one person started the question of the impropriety of increasing the present power of the large stockholders, which could have no other object but to destroy the necessary check of the small stockholders upon the Directors, who already had too much power in their hands for the benefit of the institution in general. Two or three men in favor of the change had procured proxy votes which, together with Whitney, Dalton, Bartlet, and a few others, gave a small majority, and the measure was declared carried. It was objected to, as the whole proceedings were irregular.

Whitney and Co. next proposed that the same rule of voting should be adopted at the Board of Directors; that is, if a Director at the board had 100 shares, he had as much influence and power as 5 directors owning together 100 shares. The meeting was indignant at the infamous proposition made. Dalton was heard to say the motion had better be postponed, as the gentlemen don't understand it. Some of the Stockholders at the top of their voice said, "you are a set of swindlers!" and the meeting broke up in disgust.

Matters continued until 1822; the Directors loaning themselves and a few favorites the funds of the institution, when a quarrel commenced. It appears that Whitney entered into *co.* with a man named Whitaker, and secretly opened a *shaving shop* for lending individuals a portion of their own funds. Some of them were made to understand that if their wants were urgent, Whitaker was ready to shave them for a fee amounting to double interest, and Whitney urged these notes to be discounted. The Directors, however, did not relish Whitney's plan, & at a board he was accused of mal-practices, and suspended until a meeting of the Stockholders was had.

At this time £8000 of redeemed notes of the Kingston Bank was at Montreal. Whitney heard it, and gave out he was going in another direction, but posted down to Montreal and presented himself at the Bank. The Cashier, ignorant of matters at Kingston, requested Whitney to take charge of the packet of notes for Mr. Cashier Bartlet.—This was exactly what Whitney expected, and the packet was handed to him; he then broke the seals and made use of a large amount of the Bills. Dalton was sent post after Whitney to Montreal, and took the opinion of the present Judge Stuart, who said it was an act of felony, and he W. might be apprehended as such

These proceedings created an alarm and caused a run upon the Bank, which increased by the reports of Whitney and his partizans, who appeared determined if they could not rule, to ruin the institution, by flogging the Directors with the £8000 rod Whitney had stolen.

The Bank had pushed out a large amount of Bills for so small a capital, and was soon drained of its specie. This caused an extra panic, which was increased by the ignorance of some, and designing

knaves looking out for speculation. Many thinking, as the specie was gone, the Bank had no other resources. They had no notion of the debts due it for notes discounted, and were eager to pass or sell Bills at a discount, which they had in possession, believing the Directors had issued the bills of the institution for their own benefit, for the very purpose of defrauding the public. They knew the situation of most of the Directors did not warrant them to have such large sums upon each other's responsibility, many of them being mere men of Straw, not much better than Dalton. Dalton and Bartlet endorsed for each other, and the money was not forthcoming: it was the same with other Directors: they had notes discounted, and renewed them from time to time, instead of paying them. The Bank failing, deranged the unfair and partial mode of loaning each other money at the expense of the community. Dalton owed nearly £4000, besides a large amount he received from discounts, as presenter, he being the endorser. Mr. Bartlet gave a bond for £4500. These two Directors had applied to their own use money about equal to the Stock paid in. Many other Directors had been pulling away at an unconscionable, rate, but more moderately than Dalton and Bartlet; however, both of them came forward and said they were not able without deranging their business, to pay their notes in due season, when an arrangement was made securing their debts by mortgage paying £125 quarterly with interest, with a clause to pay the same in Kingston Bills. The Bonds make no mention whether the Bills are to be taken at the full price of them, or at the rate they were passing. At the time of this arrangement the Bills were at £5 per cent. discount, and it had an effect to increase the discount, since people considered the years it would take to pay those debts, and it was reported other directors had equally favorable chances to pay their debts, together with the pamphlets issued by the parties criminating each other with mal-practices, that it was impossible to discover the situation of the institution from the contradictory statements of the directors and officers. The Stockholders were bewildered, and joined in with a party as chance guided them. The business was placed in the hands of Mr. Robert Stanton, as Agent, and there is no doubt but the Bills would have been redeemed at par, and the Stockholders paid their amount of Stock, had not the Legislature interfered by passing an act appointing Messrs. George H. Markland, John Kirby, and John Macaulay, Commissioners.

The following is a preamble to the act passed March 19, 1823:

"And whereas the said association have stopped payment and declared itself insolvent, whereby a great portion of the inhabitants of this province, holding their said bills or notes, and who have taken stock in the said bank, as well as others, have been defrauded of the same, and are likely to be without redress, unless some legislative remedy should be provided for their relief."

The loss to the Bill and certain Stockholders, was caused by the following acts of commissioners:—Markland, Kirby and Macaulay

sing Dalton and Bartlet for the whole amount of their debts, and refusing to comply with the conditions in their Bonds, allowing them an extended time for payment. The Commissioners failed in their suits and resigned their Commissions. Most people condemn the general conduct of the Directors, and consider the terms allowed Dalton and Bartlet too favorable, but as they were made, it was illegal and ruinous for the commissioners to attempt to get them aside. Dalton especially, says he was injured to a large amount, and claimed on that account a set off against his just debts.

It is rather difficult to believe that a man who had improperly obtained several thousand pounds to form an establishment and kept it above 6 years without paying interest, could be entitled to damages from the owners of the money. It is a new feature in the march of intellect, which requires a fund of brass to introduce, especially from a man like Dalton, who had declared it would ruin him if he was not allowed time, and his property be sacrificed if sold for cash; and yet this man had the audacity to say the money had done him no good, and he was perfectly justifiable to evade payment upon the principle that his bond was forfeited by the act of the Commissioners.

Dalton's account current will be a precious hint for sharpers at a future period. His name is down as the owner of 94 shares of the Stock, and £752 paid in, which he claims at par from an institution to which he himself sets a value of the claims of its creditors at one tenth or 6d. for a dollar, but which he wants to pay his debt with at five shillings in the dollar. In plain terms he wants to pass in his own favor for 5s. what he can get for 6d., and by that means defraud many honest men out of nine tenths of their property, to benefit selfish men, who by their mis-management deranged the institution.

Dalton and others by way of excuse say, the creditors of the Bank are chiefly speculators, and bought up the bills at a discount. That may be true, and they got them from poor people and expected to get the full face of the bills. Mr. John Young bought them up, and has a certificate for about £2000. Dalton and others say, the certificates for bills are worth only 6d. in the dollar. How does he judge? when certificate holders to a large amount have said, "they would only part with them at that price except to pay for the transportation of him and a few others to a convict colony."—That they would not be so cruel as to place his person in the position of an effigy suspended from the Bank in Store Street, with a barrel of Beer with a label, "Dalton's Entire Butt Beer."